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# SUPREME COURT OF THE UNITED STATES.

## No. 20.

HUGH BOYLE, PLAINTIFF IN ERROR,

VERSUS

JAMES W. ZACHARIE AND SAMUEL H. TURNER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

*At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine—*

Present, the Honorable Gabriel Duvall, one of the Associate Justices of the Supreme Court of the United States; Elias Glenn, Judge of Maryland District; Nathaniel Williams, Esquire, Attorney; Thomas Finley, Esquire, Marshal; Philip Moore, Clerk—

Among other were the following proceedings, to wit:

JAMES W. ZACHARIE and SAMUEL H. TURNER, *vs.* HUGH BOYLE.

Be it remembered, that heretofore, to wit, on the twenty-third day of December, in the year of our Lord one thousand eight hundred and nineteen, the said James W. Zacharie and Samuel H. Turner, by Edward G. Woodyear and John Scott, their attorneys, prosecuted and sued forth out of the circuit court here the writ of the United States of America of capias ad respondendum, directed to the marshal of the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, MARYLAND DISTRICT, to wit:

*To the Marshal for Maryland district, greeting:*

We command you that you take Hugh Boyle, late of Baltimore county, in Maryland district, merchant, a citizen of the State of Mary-
[L. S.] land, if he shall be found in your district, and that him so taken you safe keep, so that you have his body before the Judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, at the court-house in the city of Baltimore, on the first day of May next, to answer unto James W. Zacharie and Samuel H. Turner, citizens of the State of Louisiana, in a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ. Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the second day of August, in the year of our Lord one thousand eight hundred and nineteen.

E. G. W. and J. S. Issued 23d day of December, 1819.

PHILIP MOORE, *Clk. Circ't Ct.*

And the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, on the day of prosecuting and suing forth the said writ, declared against the said Hugh Boyle in the plea aforesaid in form following, to wit:

*Circuit court of the United States for the fourth circuit in and for the district of Maryland.*

MARYLAND DISTRICT, to wit:

Hugh Boyle, late of Baltimore county, in Maryland district, merchant, a citizen of the State of Maryland, was attached to answer unto James W. Zacharie and Samuel H. Turner, citizens of the State of Louisiana, in a plea

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of trespass on the case, &c. And whereupon the said James W. Zacharie and Samuel H. Turner, by E. G. Woodyear and John Scott, their attorneys, complain, that whereas the said Hugh Boyle, on the twenty-first day of August, in the year of our Lord eighteen hundred and nineteen, to wit, at New Orleans, at the district aforesaid, was indebted to the said James W. Zacharie and Samuel H. Turner in the sum of three thousand one hundred and ten dollars and eighty cents, current money of the United States, for so much money by the said James W. Zacharie and Samuel H. Turner before that time paid, laid out, and expended for the said Hugh Boyle, and at his special instance and request; and, being so indebted, the said Hugh Boyle, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said James W. Zacharie and Samuel H. Turner to pay them the said sum of money, when he, the said Hugh Boyle, should be thereunto afterwards requested.

And whereas the said Hugh Boyle, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, was indebted to the said James W. Zacharie and Samuel H. Turner in the sum of other three thousand one hundred and ten dollars and eighty cents, of like current money, for money by the said Hugh Boyle before that time had and received to the use of the said James W. Zacharie and Samuel H. Turner; and, being so indebted, the said Hugh Boyle, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said James W. Zacharie and Samuel H. Turner to pay them the said last mentioned sum of money, when the said Hugh Boyle should be thereunto afterwards requested.

And whereas the said Hugh Boyle, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, was indebted to the said James W. Zacharie and Samuel H. Turner in the sum of other three thousand one hundred and ten dollars and eighty cents, of like current money, for money by the said James W. Zacharie and Samuel H. Turner before that time lent and advanced to the said Hugh Boyle, and at his special instance and request; and, being so indebted, the said Hugh Boyle, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said James W. Zacharie and Samuel H. Turner to pay them the said last mentioned sum of money, when the said Hugh Boyle should be thereunto afterwards requested. Nevertheless, the said Hugh Boyle, not regarding his said several promises and undertakings, hath not yet paid the aforesaid several sums of money, or either of them, or any part thereof, to the said James W. Zacharie and Samuel H. Turner, (although so to do the said Hugh Boyle was requested by the said James W. Zacharie and Samuel H. Turner afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at the district aforesaid,) but to pay the same the said Hugh Boyle hath hitherto altogether refused, and doth still refuse so to do, to the damage of the said James W. Zacharie and Samuel H. Turner, to the value of six thousand dollars, like current money of the United States; and thereupon they bring their suit, &c.

E. G. WOODYEAR,
JOHN SCOTT, } *Attorneys for plaintiffs.*

A copy of which said declaration was made and sent with the said writ to the marshal of the district of Maryland aforesaid, thereon endorsed, "to be served on the defendant with the writ."

At which mentioned first day of May, in the year of our Lord one thousand eight hundred and twenty, and the day of the return of the writ aforesaid, comes into the circuit court here the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid; and the marshal of the district of Maryland, to wit, Paul Bentalou, gentleman, to whom the said writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

"Cepi: copy left 12th January, 1820.

"PAUL BENTALOU, *Marshal.*"

And the said Hugh Boyle being called, appears in court here by Richard B. Magruder, his attorney. And thereupon, on motion of the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, it is ruled by the court here that the said Hugh Boyle answer to the declaration aforesaid of the said James W. Zacharie and Samuel H. Turner, in the plea aforesaid, or judgment by the court here will be entered against him in default thereof. And the said Hugh Boyle, by his attorney aforesaid, defends the force and injury when, &c., and prays leave of the court here to imparle until the seventh day of November next, and then to answer to the declaration aforesaid of the said James W. Zacharie and Samuel H. Turner in the plea aforesaid, and to him it is granted; the same day is given to the aforesaid James W. Zacharie and Samuel H. Turner.

At which said seventh day of November, in the year of our Lord one thousand eight hundred and twenty, to which day the said Hugh Boyle had leave to imparle, and then to answer to the declaration of the said James W. Zacharie and Samuel H. Turner in the plea aforesaid, comes again into the circuit court here, as well the said James W. Zacharie and Samuel H. Turner by their attorneys aforesaid, as the said Hugh Boyle by his attorney aforesaid.

And the said Hugh Boyle, by his attorney aforesaid, as before, defends the force and injury when, &c., and saith that he did not assume upon himself in manner and form as the aforesaid James W. Zacharie and Samuel H. Turner above against him have declared, and of this he puts himself upon the country; and the said James W. Zacharie and Samuel H. Turner in like manner, &c. Therefore let a jury thereon appear before the court here on the first day of May next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.: the same day is given to the said parties then and there, &c.

And now here, at this day, to wit, the first day of May, in the year of our Lord one thousand eight hundred and twenty-one, come again into the circuit court here, as well the said James W. Zacharie and Samuel H. Turner by their attorneys aforesaid, as the said Hugh Boyle by his attorney aforesaid.

And the said Hugh Boyle, by his attorney aforesaid, relinquishing the averment aforesaid above by him pretended, says that he cannot deny the action aforesaid of the said James W. Zacharie and Samuel H. Turner, so as aforesaid against him brought, nor but that the aforesaid James W. Zacharie and Samuel H. Turner have sustained damage to the sum of six thousand dollars, current money of the United States, by occasion of the non-performance of the promises and assumptions aforesaid in manner and form aforesaid, as the said James W. Zacharie and Samuel H. Turner above against him have declared. Therefore it is considered by the court here that the aforesaid James W. Zacharie and Samuel H. Turner recover against

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the aforesaid Hugh Boyle as well the sum of six thousand dollars, current money of the United States, for their damages aforesaid, in form aforesaid confessed to be sustained by occasion of the non-performance of the promises and assumptions aforesaid, as also the sum of seventeen dollars and twenty-five cents, by the court here unto the said James W. Zacharie and Samuel H. Turner, on their assent, adjudged for their costs and charges by them about their suit in that behalf laid out and expended. And the said Hugh Boyle in mercy, &c.

*Memorandum.*

Judgment rendered in this cause on this first day of May, in the year of our Lord one thousand eight hundred and twenty-one, for the damages laid in the declaration, and costs of suit; the said damages to be released on payment of the sum of three thousand one hundred and thirteen dollars and eighty cents, with interest thereon from the fifteenth day of November, in the year of our Lord one thousand eight hundred and nineteen, until paid, and costs of suit.

This judgment subject to the legal operation of the defendant's discharge under the insolvent laws of Maryland.

Be it remembered, that, afterwards, to wit, on the eighth day of October, in the year of our Lord one thousand eight hundred and twenty-two, the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, prosecuted and sued forth out of the circuit court here, the writ of the said United States of America of scire facias, directed to the marshal of the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

*To the Marshal for the district of Maryland, greeting:*

Whereas at a circuit court of the United States for the fourth circuit in and for the district of Maryland, begun and held at the city of [L. S.] Baltimore on the first day of May, in the year of our Lord one thousand eight hundred and twenty-one, James W. Zacharie and Samuel H. Turner, citizens of the State of Louisiana, by the judgment of the same court, recovered against a certain Hugh Boyle, late of Baltimore county in Maryland district, merchant, a citizen of the State of Maryland, as well the sum of six thousand dollars, current money of the United States, for their damages which they had sustained by reason of the non-performance of certain promises and assumptions by the said Hugh Boyle to the said James W. Zacharie and Samuel H. Turner before that time made, as the sum of seventeen dollars and twenty-five cents for their costs and charges by them about their suit in that behalf laid out and expended, whereof the said Hugh Boyle, is convict as of record is manifest. And now, on the part of the said James W. Zacharie and Samuel H. Turner, it hath been understood in the said court that although the judgment thereof is given, yet execution for the damages, costs, and charges aforesaid still remains to be made for them, wherefore the said James W. Zacharie and Samuel H. Turner have besought that a proper remedy be granted to them in this behalf; and as it is right that those things which in the said circuit court are lawfully transacted and adjudged should be carried into due and speedy execution; you are, therefore, hereby commanded, that, by good and lawful men of

your district, you give notice to the said Hugh Boyle that he be and appear before the said circuit court, to be held at the city of Baltimore on the seventh day of November next, to show if he hath or can say any thing for himself, why the said James W. Zacharie and Samuel H. Turner ought not to have their execution against him, the said Hugh Boyle, for the damages, costs, and charges aforesaid, according to the force, form, and effect of the recovery aforesaid, if he, the said Hugh Boyle, shall think fit, and further to do and receive what the said court shall then and there consider concerning him in this behalf. And have you there the names of those by whom you shall give him notice, and this writ.

Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the fifth day of August, in the year of our Lord one thousand eight hundred and twenty-two.

E. G. W. and J. S. Issued 8th October, 1822.

PHILIP MOORE, *Clk. Circ't Ct.*

At which said mentioned seventh day of November, in the year of our Lord one thousand eight hundred and twenty-two, being the day of the return of the aforegoing writ, comes into the circuit court here the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid; and the marshal of the Maryland district aforesaid, to wit, Paul Bentalou, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

"10th October, 1822. Made known in the presence of John G. Gatchell and John F. Wells.

"PAUL BENTALOU, *Marshal.*"

And the said Hugh Boyle being so forewarned, now here comes, by Richard B. Magruder, his attorney.

And thereupon, on motion of the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, it is ruled by the court here that the said Hugh Boyle answer to the writ of scire facias aforesaid, or execution will be awarded against him in default thereof, to be levied, &c. And the said Hugh Boyle, by his attorney aforesaid, prays leave of the court here to imparle until the first day of May next, and then to answer to the writ of scire facias aforesaid, and he hath it; the same day is given to the said James W. Zacharie and Samuel H. Turner also.

At which said first day of May, in the year of our Lord one thousand eight hundred and twenty-three, to which said day the said Hugh Boyle had leave to imparle, and then to answer to the writ of scire facias aforesaid, come into the circuit court here as well the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, as the said Hugh Boyle, by his attorney aforesaid.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the seventh day of November next. At which said seventh day of November, in the year of our Lord one thousand eight hundred and twenty-three, come again into the circuit court here as well the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, as the said Hugh Boyle, by his attorney aforesaid.

Thereupon it is considered by the court here that the said James W. Zacharie and Samuel H. Turner have their execution against the said Hugh

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Boyle, for as well the damages, costs, and charges aforesaid, in the writ of scire facias aforesaid mentioned, according to the force, form, and effect of the recovery aforesaid, as the sum of sixteen dollars and seventy-five cents, to the said James W. Zacharie and Samuel H. Turner, on their assent, by the court here adjudged for their costs and charges, which they have sustained by reason of the delay of the execution of the judgment aforesaid; and the said Hugh Boyle in mercy, &c.

Upon which said judgment a writ of fieri facias was issued, returnable to December term, 1824, to lie in the office.

The above writ renewed to December term, 1825, to lie in the office.

The above writ renewed to December term, 1826, to lie in the office.

The above writ renewed to December term, 1827, to lie in the office.

Afterwards, to wit, on the twelfth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, prosecuted and sued forth out of the circuit court here the writ of the United States of America of fieri facias on the judgment aforesaid, directed to the marshal of the Maryland district aforesaid, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

*To the Marshal for the Maryland district, greeting:*

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first day of May, in the year of our Lord one thousand eight hundred and twenty-one, James W. Zacharie and Samuel H. Turner, citizens of the State of Louisiana, by the judgment of the same court, recovered against a certain Hugh Boyle, late of Baltimore county, in Maryland district, merchant, a citizen of the State of Maryland, as well the sum of six thousand dollars, current money of the United States, for their damages which they had sustained by reason of the non-performance of certain promises and assumptions by the said Hugh Boyle to the said James W. Zacharie and Samuel H. Turner before that time made, as the sum of seventeen dollars and twenty-five cents for their costs and charges by them about their suit in that behalf laid out and expended; whereof the said Hugh Boyle is convict, as of record is manifest.

And whereas, also, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the seventh day of November, in the year of our Lord one thousand eight hundred and twenty-three, it was considered that the said James W. Zacharie and Samuel H. Turner should have their execution against the said Hugh Boyle for as well the damages, costs, and charges aforesaid, as also for the sum of sixteen dollars and seventy-five cents, which to the said James W. Zacharie and Samuel H. Turner, in the said court, was adjudged for their costs and charges which they had sustained by delay of the execution aforesaid; whereof the said Hugh Boyle is also convict, as of record is manifest.

Therefore you are hereby commanded, that, of the goods and chattels, lands and tenements of the said Hugh Boyle in your district being, you cause to be made the damages, costs, and charges aforesaid, and have you those sums of money before the said circuit court, to be held at the city of Baltimore on the eighth day of May next, to render unto the said James

W. Zacharie and Samuel H. Turner for the damages, costs, and charges aforesaid. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and twenty-seven.

J. S. Issued 12th December, 1827.

PHILIP MOORE, *Clk. Circ't Ct.*

*Endorsed*—No. 1.

| | | | |
|---|---|---|---|
| JAMES W. ZACHARIE, SAMUEL H. TURNER, *vs.* HUGH BOYLE. | 5th fi. fa. after sci. fa., | Damages, | $6,000 |
| | | Costs, | 17 25 |
| | | Costs, sci. fa., | 16 75 |
| | | Add'l, | 3 00 |

To be released on payment of $3,113 80, with interest from 15th November, 1819, and costs.

Judgment 1st May, 1821. J. S.

At which mentioned eighth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, being the return day of the aforegoing writ, comes into the circuit court here as well the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, as the marshal of the Maryland district aforesaid, to wit, Thomas Finley, gentleman, to whom the said writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

"Levied, as per schedule, on the 31st day of March, 1828.

"Injunction issued on the 8th April, 1828.

"THOMAS FINLEY, *Marshal.*"

*Schedule.*

UNITED STATES OF AMERICA, DISTRICT OF MARYLAND.

We, the subscribers, being duly summoned and sworn by the marshal of the United States for the district of Maryland, by virtue of a writ of fieri facias, issued out of the circuit court of the United States for the fourth circuit, in the case of James W. Zacharie and Samuel H. Turner against Hugh Boyle, to appraise the goods and chattels, lands and tenements of the said Hugh Boyle, do appraise the same in current money as follows, to wit:

The ship General Smith, with all her tackle, apparel, and furniture, at seven thousand dollars.

Given under our hands and seals at Baltimore, this 31st day of March, 1828.

THOMAS HIGINBOTHAM, [SEAL.]
JOHN B. HOWELL, [SEAL.]

*Injunction.*

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

*To James W. Zacharie and Samuel H. Turner, you and each of you, your and each of your agents, attorney or attorneys, servants or any and all other persons acting on their behalf, and particularly the marshal of the Maryland district, greeting:*

Whereas, on the seventh day of April, in the year of our Lord one thousand eight hundred and twenty-eight, Hugh Boyle, by his solicitors, did

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file his bill of complaint against you as defendant, setting forth that, sometime in the year 1817 or 1818, the orator had a ship called the Mohawk, in New Orleans, which ship had been consigned to Messrs. Broadlove and Bradford, of that place, who, not being able to obtain a freight for the ship, placed her in the hands of Messrs. Vincent Nolte & Co., of New Orleans, merchants, and did so without the knowledge or consent of the orator: that the master of the ship being very extravagant, and the last mentioned consignees, Nolte & Co., being improvident, they advanced money whenever the master called for it, without inquiring whether such advances were necessary disbursements for the ship, and when, in point of fact, the master lost large sums of money in gambling, and, as the orator believes, with the knowledge of that fact by said Nolte & Co., who, nevertheless, supplied him with money, and charged it to the ship, until they made up an account for about five thousand four hundred and fifty dollars, for which they drew a draft upon the orator, who, never having before paid so large a sum of money for disbursements of a ship upon such a voyage, and believing the amount to be unjust and extravagant, refused to accept the draft, except to the amount of three thousand dollars, which sum the orator paid, and caused the draft to be protested for the remainder, and it was returned after protest to New Orleans. On the arrival of the protest, the orator had lying at New Orleans a brig, which had been consigned to James W. Zacharie and Samuel Turner, merchants, carrying on business there under the firm of Zacharie and Turner, which brig was loaded and ready to sail for Liverpool, when she was attached by legal process issued at the suit of Nolte & Co., and the said Zacharie and Turner became security upon the said attachment, which was laid for the purpose of recovering the debt which the orator had theretofore refused to pay when drawn upon as aforesaid by the said Nolte & Co. The orator further states, that, for the purpose of indemnifying themselves against risk, by reason of their having become security to the attachment aforesaid, the said Zacharie and Turner prevailed upon the master of the said brig, he being a part owner of her to the extent of one fourth, to give them a lien on the freight which was payable at Liverpool; and before they would consent to release their said lien, they transmitted to Baltimore a paper or instrument of indemnity to them, to be signed and executed by the orator, and by security to be given by him; and the orator having prevailed upon Lemuel Taylor, Esquire, of Baltimore, to join the orator in executing said paper, it was executed by the orator, and by the said Lemuel Taylor as the security of the orator, and delivered over to Mr. John C. Wederstandt, of Baltimore, who hath since removed to New Orleans, who acted on behalf of the said Zacharie and Turner. The orator has no means of ascertaining the exact contents of the said paper or instrument of indemnity, not having kept a copy of the same, and not being able to procure one, although he hath made application to a certain David Williamson, one of the firm of Luke Tiernan and Sons, in whose hands he believes the said paper once was lodged, and hath requested of said Williamson a copy.

The orator further states, that shortly after this transaction he became embarrassed in business, suspended payment, and was compelled, on or about the 31st day of December, in the year 1819, to apply to the commissioners of insolvent debtors in Baltimore for the benefit of the insolvent laws of Maryland, and on that occasion returned the said claim of Zacharie and Turner in his schedule, as he presumed he was bound to do, whether he regarded it as a just debt or not, although he never considered it a debt

which in equity he ought to have been bound for, however he might have committed himself in law by reason of his having signed the document or paper transmitted from New Orleans, to be executed by him with security as herein before set forth.

The orator further states, that he was duly and finally discharged under the insolvent laws of Maryland; and having been sued by the said Zacharie and Turner in the circuit court of the United States for the fourth circuit in and for the district of Maryland, a judgment was obtained against him at May term of said court, in the year 1821, for the sum of three thousand one hundred and thirteen dollars and eighty cents, with interest from the 15th November, 1819, besides costs of suit—subject, however, to the legal operation of the discharge which the orator had obtained under the said insolvent laws of Maryland, as will more fully appear on reference to the short copy of said judgment, herewith filed, marked exhibit A, which the orator prays may be received and considered as part of this his bill of complaint.

The orator further states, that the said Zacharie and Turner have caused to be issued out of the said circuit court an execution on the said judgment, and from time to time have renewed the same, and thereby kept the same alive, and have actually placed a writ of fieri facias, issued upon the said judgment, in the hands of the marshal of the district of Maryland, who has been directed by the counsel of the said Zacharie and Turner to levy the same upon certain property standing in the name of the orator, and which property has been acquired by the orator, so far as he has an interest therein, since his said application for the benefit of the insolvent laws, and amongst the said property is the ship General Smith, of Baltimore, which the orator is apprehensive will be seized by the marshal and detained here, greatly to his inconvenience, and probably to his serious damage.

And the orator further states, that sometime in the year 1821 the orator recommenced business in the city of Baltimore; and sometime thereafter, to wit, on or about the 22d day of July, in the year 1821, the said Zacharie consigned a vessel to the orator, which arrived at Baltimore, and proposed to the orator to take the amount of the said judgment out in commissions, to be earned by the orator on said consignment, and such future consignments as the said Zacharie should make to the orator, he, the orator, according to said proposal of said Zacharie, being obliged to take out of the proceeds of such consignments only one half of the commissions to which he would be entitled, and to pass the other half to the credit of the said judgment, to which the orator consented, and did actually credit the said Zacharie and Turner on account of said judgment, and in part payment thereof, on the said consignment, with one half of the said commissions, that is to say, with the sum of forty-five dollars and forty-three cents, being the whole commissions on that consignment, and thirty-seven dollars and thirty-two cents, being half commissions on a second transaction, as he will be prepared at the proper time to prove to the satisfaction of the court, and for no part of which sums have the said Zacharie and Turner ever yet given credit to the orator on said judgment, but, on the contrary, now seek to enforce the payment of the whole of the said judgment against the orator.

And the orator further states, that sometime in the year 1822, or in 1823, the precise time the orator cannot recollect, but will be prepared at a proper time to establish the same fully by proof to the satisfaction of the court, the said Zacharie and Turner caused an attachment, or some other judicial proceeding in the nature of a writ of attachment, to be issued out of some one

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of the courts of Louisiana, and which said writ or process of attachment was founded upon the said claim of the said Zacharie and Turner, for which the judgment aforesaid was obtained, and the same was by their direction laid in the hands of a certain Ambrose Nelson, of New Orleans, who was a debtor to the orator in a large amount, and whereby the orator has been deprived of the benefit of any part of the debt now due by the said Nelson to the orator, being somewhere about the sum of fifteen hundred dollars, besides interest thereon from the said year when the attachment aforesaid was laid, and which sum is as completely lost to the orator as if it had been paid over to the said Zacharie and Turner, who, for aught the orator knows to the contrary, may have actually recovered the whole of it in virtue of said attachment, and may have refused to give credit for the same, as they have done for the commissions on the shipment or consignment made to the orator as herein before mentioned.

And the orator further states, that they also attached property belonging to the orator, which was in the hands of Messrs. Broadlove and Bradford, of New Orleans, for which the orator has never received any credit, although it has been thus far completely lost to him, amounting, as he verily believes, to the sum of, as per invoice, to five hundred and ninety-three dollars and ninety-three cents, including interest to this time.

The orator is advised that he is protected in the enjoyment of all property acquired by him since the date of his discharge under the insolvent laws aforesaid, except such as he might have acquired by gift, descent, or in his own right by bequest, devise, or in any course of distribution; and that he hath not acquired any property of any kind, in any of the modes thus specified, since his said discharge; and he is advised that by the law of the land his final discharge under the said insolvent laws is a complete protection against the judgment aforesaid, as well of his person as of all property acquired by him, except in some one of the above modes; and that no property whatever of which he is in possession, or which he may actually own, is liable to any execution under the said judgment, until a scire facias, containing an averment of the acquisition of property in some one or more of the above modes by him since his said discharge shall have been first issued, and found to be true, either by confession or by the verdict of a jury, or otherwise, according to law. And he is further advised, that, even admitting the liability of his acquisitions since the said discharge to execution under the said judgment, he is entitled to credit for the several amounts attached as herein before mentioned, and for the amount of commissions credited on said shipment, and passed to the credit of said Zacharie and Turner. And he is further advised, that, pending the said attachment and any other judicial proceedings which may have been instituted on said judgment against the effects of the said orator elsewhere than in the State of Maryland, no execution or other process ought to issue out of this court upon such judgment until the said attachments or other suits shall have been decided. In tender consideration whereof, may it please the court to cause to be issued to the said James W. Zacharie and Samuel Turner, of New Orleans, the writ of this court of subpœna, to be to them directed, commanding them to be and appear before the court at a convenient day therein to be named, and under a certain penalty therein to be prescribed, to answer the facts herein before set forth. And the orator further prays the court to grant to him the writ of injunction of this court, to be issued to the said James W. Zacharie and Samuel Turner, commanding them, their agents,

attorneys, servants, or any and all other persons acting on their behalf, and particularly the marshal of Maryland district, to abstain from and absolutely surcease from further proceedings to enforce the execution of the said judgment against the orator, until the matter can be heard in equity, or until the further order of this court.

We, having regard to the matters aforesaid, do therefore strictly command and enjoin you, the said James W. Zacharie and Samuel H. Turner, and each of you, and your and each of your agents, attorney or attorneys, servants, or any and all other persons acting on your behalf, and particularly the marshal of Maryland district, to abstain from and absolutely surcease from further proceedings to enforce the execution of the said judgment against the orator, until the further order of our said court. Hereof fail not as you will answer the contrary at your peril.

Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and twenty-eight.

R. B. M. Issued 5th April, 1828.

PHILIP MOORE, *Clk. Circ't Ct.*

Afterwards, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and twenty-nine, the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, filed in the circuit court here the following order:

ZACHARIE AND TURNER, *vs.* BOYLE. } *Fi. fa. from circuit court to May term*, 1828. *Returned levied, as per schedule. Injunction issued.*

MR. MOORE: Issue a vend. exps. in the above case.

JOHN SCOTT,
JOHN GLENN,
*Attorneys for plaintiffs.*

10*th June*, 1829.

Afterwards, to wit, on the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and twenty-nine, the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, prosecuted and sued forth out of the circuit court here the writ of the said United States of America of venditioni exponas, on the judgment aforesaid, directed to the marshal of the Maryland district aforesaid, in form following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit:

*To the Marshal for Maryland district, greeting:*

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first day of May, in the year of our Lord one thousand eight hundred and twenty-one, James W. Zacharie and Samuel H. Turner, citizens of the State of Louisiana, by the judgment of the same court, recovered against a certain Hugh Boyle, late of Baltimore county, in Maryland district, merchant, a citizen of the State of Maryland, as well the sum of six thousand dollars, current money of the United States, for their damages which they had sustained by reason of the non-performance of certain promises and assumptions by the said Hugh Boyle to the said James W. Zacharie and Samuel H. Turner before that time made, as the sum of seventeen dollars and twenty-five cents, for their costs and charges by them about their suit

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in that behalf laid out and expended, whereof the said Hugh Boyle is convict, as of record is manifest.

And whereas, also, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the seventh day of November, in the year of our Lord one thousand eight hundred and twenty-three, it was considered that the said James W. Zacharie and Samuel H. Turner should have their execution against the said Hugh Boyle, for as well the damages, costs, and charges aforesaid, as also for the sum of sixteen dollars and seventy-five cents, which to the said James W. Zacharie and Samuel H. Turner in the said court was adjudged for their costs and charges which they had sustained by delay of the execution aforesaid, whereof the said Hugh Boyle is also convict, as of record is manifest.

And whereas, also, on the twelfth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, command was given to you, that of the goods and chattels, lands and tenements of the said Hugh Boyle, being in your district, you should cause to be made the damages, costs, and charges aforesaid, and that you should have those sums of money before the said circuit court, to be held at the city of Baltimore on the eighth day of May then next, to be rendered unto the said James W. Zacharie and Samuel H. Turner for the damages, costs, and charges aforesaid; on which said eighth day of May you made return thereof to the said court, that, by virtue of the said writ, to you directed for that purpose, you had taken—

UNITED STATES OF AMERICA, DISTRICT OF MARYLAND.

We, the subscribers, being duly summoned and sworn by the marshal of the United States for the district of Maryland, by virtue of a writ of fieri facias issued out of the circuit court of the United States for the fourth circuit, in the case of James W. Zacharie and Samuel H. Turner against Hugh Boyle, to appraise the goods and chattels, lands and tenements of the said Hugh Boyle, do appraise the same in current money as follows, to wit:

The ship General Smith, with all her tackle, apparel, and furniture, at seven thousand dollars.

Given under our hands and seals at Baltimore, this 31st day of March, 1828.

THOMAS HIGINBOTHAM, [SEAL.]
JOHN B. HOWELL, [SEAL.]

The goods and chattels of the said Hugh Boyle in your district being, to satisfy unto the said James W. Zacharie and Samuel H. Turner the damages, costs, and charges aforesaid in the said writ mentioned, which said goods and chattels remained in your hands unsold, as per the following return made on the said writ of fieri facias, viz:

"Levied, as per schedule, on the 31st March, 1828; injunction issued on the 8th April, 1828."

So that the damages, costs, and charges aforesaid, you could not have, as by the said writ you were commanded; therefore, you are hereby commanded, that the said goods and chattels, so as aforesaid taken, you expose to sale, and the money therefrom arising you have before the said circuit court, to be held at the city of Baltimore on the eighth day of December next, to render unto the said James W. Zacharie and Samuel H. Turner the damages, costs, and charges aforesaid, and all such costs as have accrued on the writ of fieri facias aforesaid; and how you shall execute this writ you

make known unto the said court at the place and on the day aforesaid, and have you then and there this writ.

Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the third day of August, in the year of our Lord one thousand eight hundred and twenty-nine.

J. S. Issued 29th August, 1829.

PHILIP MOORE, *Clk. Circ't Ct.*

At which mentioned eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, being the day of the return of the aforegoing writ, comes into the circuit court here, as well the said James W. Zacharie and Samuel H. Turner, by their attorneys aforesaid, as the marshal of the Maryland district aforesaid, to wit, Thomas Finley, gentleman, to whom the said aforegoing writ was, in form aforesaid, directed, and the said Hugh Boyle by his attorney aforesaid; and thereupon the said Hugh Boyle, by his attorney aforesaid, files in court here the following notice of a motion, by the attorney of the said Boyle, to quash the writ of venditioni exponas as aforesaid.

ZACHARIE AND TURNER, *vs.* HUGH BOYLE. } No. 5, *Judicials to December term*, 1829.

MR. MOORE: Enter upon the docket a motion by defendant's counsel to quash the writ of venditioni exponas issued in this case: make out a copy to be served on the plaintiff's counsel.

R. B. MAGRUDER,
*8th December*, 1829. *Attorney for defendant.*

And on the ninth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, did accordingly move the court to quash the said writ of venditioni exponas, and among other grounds showed forth in support of his said motion that the Judge who granted the said writ of injunction required the defendant at law, the said Hugh Boyle, to execute the following injunction, bond, or obligation, before the said writ of injunction was granted:

Know all men by these presents, that we, Hugh Boyle and John B. Howell, both of the city of Baltimore, in the State of Maryland, are held and firmly bound unto James W. Zacharie and Samuel Turner, of the city of New Orleans, in the State of Louisiana, in the just and full sum of ten thousand dollars, money of the United States, to be paid to the said James W. Zacharie and Samuel Turner, their executors, administrators, or assigns; to the true payment whereof we bind ourselves and every of us, our and every of our heirs, executors, and administrators, jointly and severally, for and in the whole, firmly by these presents: sealed with our seals, and dated this thirty-first day of March, in the year of our Lord one thousand eight hundred and twenty-eight.

Whereas the above bounden Hugh Boyle is about to obtain an injunction to stay proceedings at law on a judgment rendered against him in the circuit court of the United States for the fourth circuit in and for the district of Maryland, by the above named James W. Zacharie and Samuel Turner, for the sum of three thousand one hundred and thirteen dollars and eighty cents, ($3,113 80,) with interest from the fifteenth November, eighteen hundred and nineteen, and costs. Now the condition of the above obliga-

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tion is such, that, if the said Hugh Boyle shall prosecute the said writ of injunction with effect, and satisfy and pay as well the said sum of money and costs, as all costs, damages, and charges that shall accrue on the equity side of the said court, or be occasioned by the delay of execution on the said judgment, unless the said court, as a court of chancery, shall decree to the contrary, and shall in all things obey such order and decree as the said court shall make in the premises, then the above obligation to be of none effect, else to be in full force and virtue.

HUGH BOYLE, [SEAL.]
JOHN B. HOWELL, [SEAL.]

Signed, sealed, and delivered in the presence of
THOS. HIGINBOTHAM.

I believe the above security to be good and sufficient,
THOS. FINLEY,
R. B. MAGRUDER.

And also the one hundredth rule of the rules adopted by the circuit court of the United States for the fourth circuit in and for the district of Maryland, passed and adopted by the said court as the rules for the orderly conducting of business in the said circuit court in cases at common law, and to regulate the practice in the said court, at November term, 1802.

*One Hundredth Rule.*

"Writs of capias ad satisfaciendum, fieri facias, (or attachment by way of execution,) as authorized by the act of Assembly of this State, may issue at the option of the party in whose favor any judgment shall be rendered for the recovery of any debt or damages; but only one execution shall be served returnable to the same court, unless sufficient money shall not be levied to satisfy the judgment, in which case the ca. sa. may be afterwards served for the residue, which shall be endorsed thereon, and the costs of the writ not served shall be paid by the party issuing it."

And also the act of the general Assembly of Maryland, passed at November session, 1799, chapter 79, entitled "An act to prevent unnecessary delay and expense, and for the further advancement of justice in the court of chancery;" and also the act of the General Assembly of Maryland, entitled "An act for the ease of the inhabitants in examining evidences relating to the bounds of lands, and in the manner of obtaining injunctions," passed at October session, 1723, chapter 8.

*See Agreement.*

HUGH BOYLE, *vs.* ZACHARIE AND TURNER. } *Writ of error on the common law side of the circuit court, U. S. for Maryland district.*

It is agreed by and between the parties to this cause, by their counsel, that the acts of Assembly of Maryland, cited on the argument of this cause, viz. 1723, chap. 8, and 1799, chap. 79, and all other acts of Assembly which either party may choose to read on the argument of this cause in the Supreme Court of the United States, may be read from the printed statute books containing the laws of Maryland.

JOHN GLENN, *for plaintiff.*
R. B. MAGRUDER, *for defendants.*

And also appealed to the knowledge of the court, that, according to the uniform and immemorial practice in the State of Maryland, with regard to the State courts, that whenever a fieri facias had been levied, and the proceedings were stayed by injunction before the day of sale, the officer who had levied the writ of fieri facias delivered up the property seized by him to the defendant at law, upon the service upon the said officer of notice of the writ of injunction.

And afterwards, to wit, on the tenth day of December, in the year eighteen hundred and twenty-nine, the said Zacharie and Turner, by their attorneys aforesaid, prayed the court here to rule the marshal aforesaid to make return to the said writ of venditioni exponas: whereupon the said court did order and direct the marshal aforesaid to make return of the said writ of venditioni exponas on or before the day of December then next, at which said day of December the marshal aforesaid did make the following return:

"The marshal of the district of Maryland respectfully represents to the honorable the Judges of the circuit court, that the ship General Smith, which, by virtue of the foregoing writ of venditioni exponas, the marshal is commanded to sell, was sent by the defendant in this cause on a foreign voyage shortly after the injunction granted on the 8th of April, 1828, commanding a stay of further proceedings, had been served; that the said ship had not returned to the district of Maryland, nor to any port of the United States, at May term, 1829, when the injunction in this cause was dissolved, and an appeal prayed thereon to the Supreme Court; that, on the 29th of August, 1829, when the venditioni exponas issued, the said ship was still absent; that, on or about the 16th of September, 1829, she arrived at the port of Baltimore, when the marshal apprised one of the counsel of the defendant, and also the defendant himself, that, in obedience to the command of the writ, he deemed it to be his duty to proceed to advertise and sell the ship General Smith, unless a satisfactory arrangement was made to render that step unnecessary; that an agreement was then entered into to place in the hands of the marshal a written promise, with the same securities that are on the appeal bond in this case, to have the amount of the debt, interest and costs forthcoming in the early part of the December term of this court, provided the marshal was called on for a return on the writ of venditioni exponas; that afterwards a promissory note was made by the defendant, and endorsed by one of the securities on the appeal bond, for the amount of debt, interest and costs, payable on the 17th of the present month, was placed in the hands of the marshal, which note, after a return of the writ was called for, was deposited in the branch bank of the United States for collection, and was paid at maturity; that the amount so paid remains in bank to the credit of the marshal, to be returned as made under the said writ, if the court shall be of opinion that it rightfully issued, and empowered and obliged the marshal to sell the said ship, seized under fieri facias issued in 1828, and stayed by injunction, as aforesaid.

THOMAS FINLEY, *Marshal.*"

And thereupon the court here did overrule the said motion to quash the said writ of venditioni exponas, so as aforesaid made by the said attorneys of the said Hugh Boyle, and did order and direct the said marshal to bring into court the money mentioned in the return of the said marshal so as aforesaid made to the said writ of venditioni exponas.

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Afterwards, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, the aforesaid Hugh Boyle, by his attorneys aforesaid, produced to the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next, which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, sc.

*The President of the United States to the Judges of the circuit court of the United States for the district of Maryland, greeting:*

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court, before you or some of you, between James W. Zacharie and Samuel H. Turner, plaintiffs, and Hugh Boyle, defendant, a manifest error hath happened, to the great damage of the said Hugh Boyle, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the third day of August, in the year of our Lord one thousand eight hundred and twenty-nine.

PHILIP MOORE, *Clk. Circ't Ct.*

Issued 25th January, 1830.

In pursuance whereof, and according to the form and effect of the act of Congress of the United States in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, together with the said writ, are hereby transmitted to the said Supreme Court accordingly.

*The United States of America to James W. Zacharie and Samuel H. Turner, greeting:*

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington on the second Monday in January *instant*, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the district of Maryland, wherein James W. Zacharie and Samuel H. Turner are plaintiffs, and Hugh Boyle is defendant, to show cause, if any there be, why the judgment rendered against the said Hugh Boyle, as in

the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this 9th day of January, 1830.

ELIAS GLENN, [SEAL.]
*District Judge.*

Service admitted.

JOHN SCOTT,
*Attorney for Zacharie and Turner.*

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and thirty.

[SEAL.] PHILIP MOORE, *Clk. Circ't Ct.*